vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2612 OF 2006
IN
SUIT NO.1186 OF 2004

Jer Jawhar Thadani ... Plaintiff

V/s.

Mohan Gurbaxani & Ors. ... Defendants

Mr.Snehal Shah for the Plaintiff
Mr.K.M. Munshi for the Defendant No.1
Mr.Leon Samuel for Defendant Nos.4 and 5
Mr.Jariwala for Defendant No.6
Mr.R.T. Bhagat, Representative of Court Receiver, present

CORAM : SMT. NISHITA MHATRE, J.

DATED : AUGUST 8, 2006

P.C.:

. The Plaintiff has filed the present Motion for a direction to the Court Receiver to pay an amount of Rs.1,37,692/- to defendant No.6 from the amount deposited in this Court against Bill No.661 at Exhibit F to the Motion. By an order dated 28.4.2001, this Court had directed Defendant No.1 to deposit an amount of Rs.76,22,431.50 in this Court within a period of six weeks from the date of that order. Accordingly, Defendant No.1 has deposited the amount.

2. The Plaintiff, who is 81 years old, is residing in the suit flat. Defendant Nos.4 and 5 contend that they are entitled to the suit flat under the Trust Deed settled by the Plaintiff’s deceased husband. In any event, the trust deed indicates that the plaintiff would

be entitled to reside in the premises without paying any licence fee during her lifetime. All outgoings and maintainance charges are also to be borne by the trustees as stipulated in the deed.

3. It is now submitted by the plaintiff that since the amount of Rs.76 lacs in respect of the estate of the deceased is deposited in the Court, the maintainance be paid from this amount. The advocate for Defendant No.1 submits that in the event this Court comes to the conclusion that Defendant Nos.4 and 5 are required to pay the amount in respect of the outgoings, etc. of the suit flat they will reimburse the same from the estate of the deceased to that extent.

4. Hence, the amount of Rs.76,22,431.50 deposited with the Prothonotary and Senior Master to be transferred to the Court Receiver within a week from today.

5. Notice of Motion is allowed in terms of prayer clauses (a) and (b). It is clarified that in the event it is held that Defendant Nos.4 and 5 are responsible for paying the outgoings, maintainance and other charges in respect of the flat, they shall reimburse the amount to the estate of the defendant.

6. Prothonotary and Senior Master and the Court Receiver to act on an authenticated copy of this order.